

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TONY A. LUCERO,
Plaintiff,

v.

AMERICAN HOME MORTGAGE,
Defendant.

No. CV 09-02879 CRB

**ORDER SETTING HEARING AND
BRIEFING SCHEDULE FOR
MOTION TO DISMISS AND
MOTION TO SUPPRESS**

On August 11, 2009, this Court issued an Order to Show Cause why Plaintiff Tony Lucero's case should not be dismissed under Federal Rule of Civil Procedure 41 for his failure to file an opposition brief to Defendant's Motion to Dismiss and Motion to Suppress. The Court also thereby vacated the hearing on those motions that was calendared for August 21, 2009. Plaintiff subsequently responded that he had not anticipated Defendant's removal of this action to federal court, and that his counsel was not admitted to practice in federal court. Plaintiff further stated that he had not intended to state a federal cause of action, that he "expressly waive[d]" that cause of action, and that he wished to remand to state court. In response to this Court's Order of August 24, 2009, Plaintiff has now filed a Statement of Non-Opposition to Removal, acknowledging that the Court has diversity jurisdiction over the case.

Therefore, the hearing on Defendant's Motion to Dismiss and Motion to Suppress as to Plaintiff's non-waived claims shall be held at 10:00 am on October 30, 2009. Plaintiff's

1 Opposition to Defendant's motions is due on or before October 9, 2009. Defendant's Reply
2 is due on or before October 16, 2009.

3 **IT IS SO ORDERED.**

4
5 Dated: September 16, 2009



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE